

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSEPH W. HUBER, JR.,

Plaintiff,

vs.

Case No. 3:12cv288

STATE OF OHIO, et al.,

JUDGE WALTER HERBERT RICE

Defendants.

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE IN THEIR ENTIRETY (DOC.
#2) AND OVERRULING PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL
FILING (DOC. #4); PLAINTIFF'S COMPLAINT IS DISMISSED, WITHOUT
PREJUDICE, PURSUANT TO 28 U.S.C. § 1915(e)(2)(B); TERMINATION
ENTRY

Based on the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Report and Recommendations filed September 10, 2012 (Doc. #2), as well as upon a thorough de novo review of this Court's file and the applicable law, this Court adopts the aforesaid Report and Recommendations in their entirety and overrules Plaintiff's Objections to said judicial filing (Doc. #4).

Plaintiff's Complaint (Doc. #3) is dismissed without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B).

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

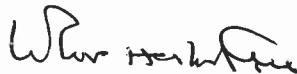
1. The State of Ohio and the prosecuting attorney are immune from suit.

Moreover, Plaintiff fails to state a claim for injunctive relief, i.e., seeking to be released from prison, against the Warden, given that such relief can be granted only by a writ of habeas corpus, not by way of a § 1983 claim as set forth herein.

WHEREFORE, based upon the aforesaid, Plaintiff's Complaint (Doc. #3) is dismissed, without prejudice, pursuant to 28 U.S.C. § 1915((e)(2)(B)). Judgment is to enter for the Defendants accordingly.

Given that any appeal from this Court's decision would be objectively frivolous, this Court would deny any anticipated motion for leave to appeal *in forma pauperis*.

The captioned cause is ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.



September 27, 2012

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Parties and Counsel of Record